

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch 333 Market Street San Francisco, CA 94105-2197 NUMBER: 27850N DATE: October 27, 2004 RESPONSE REQUIRED BY: November 26, 2004

PERMIT MANAGER: Kelley Reid

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- 1. **INTRODUCTION:** Ms. Karen Kovacs, on behalf of California Department of Fish and Game (CDFG), 619 Second Street, Eureka, California 95501, (707-445-6493), and Mr. Ernie Perry, on behalf of County of Del Norte, 981 "H" Street, Suite 110, Crescent City, CA 95531 (707-464-7254) have applied for a U.S. Army, Corps of Engineers (Corps) permit to breach the Lake Earl and Lake Talawa lagoons by excavating a trench across the sandbar to the Pacific Ocean. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
- 2. PROPOSED PROJECT: The management of the Lake Earl Wildlife Area (LEWA) includes the periodic breaching of the lagoons during the winter months. Implementation of the Management Plan is designed to produce optimum conditions for a wide variety of native plant and animal species with special emphasis on wetland and water-associated wildlife, while minimizing or avoiding impacts to the surrounding environment. The lagoon would be mechanically breached when the water surface reaches eight feet Mean Sea Level (MSL) in the period between September 1st and February 15th and when the water surface is above five feet MSL on February 15th. Under unusual circumstances, the surface elevation may reach 10 feet MSL before the breach is completed. For more information a copy of the LEWA Management Plan. Draft Environmental Impact Report and Final Environmental Impact Report may be obtained from

CDFG at the above address. The County and CDFG have requested a **ten-year permit** for breaching the lagoons as described.

Project Site: The breach location is in Section 31, T17N-R1W, HBM, Crescent City Quad, as depicted on the attached map (Sheets 1 and 2 of 5). Current conditions at the site consist of an unvegetated sandbar, approximately twelve to fifteen feet in height, separating the brackish lagoons from the surfzone of the Pacific Ocean.

Purpose and Need: The basic purpose of this project is to manage winter lagoon levels between 8-10 feet MSL to maximize ecological productivity of the LEWA to the optimal extent possible while balancing the needs of all species with the needs of the public. When the water levels rise higher than eight feet, neighboring ranchers begin to have their pastures inundated. When the water levels rise higher than 10 feet, local roads and yards become inundated. Anecdotally, the LEWA naturally breaches at approximately 14 feet MSL.

Impact: CDFG and the County excavate a trench 20 feet wide, 200 feet long and four feet deep, resulting in approximately 600 cubic yards (cy) of sand sidecast on the adjacent dunes; approximately half that volume (300 cy) may be below the high tide line. When the trench is deep enough to allow water to begin flowing out of the lagoons into the ocean, the flowing water also carries sand to the ocean, deepening and widening the breach until a torrent flows across the sandbar to the ocean. In 24-48

hours, the torrent opens the breach to 200 feet to 1000 feet or more at an elevation of two to four feet MSL. During the breaching, the surface area of the lagoon changes from 4,800 acres to 2,200 acres. The next winter storms typically seal the breach and begin filling the Lake Earl basin.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Part230 and 325, Appendix B. otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, Eureka Field Office, P.O. Box 4863, Eureka, California 95502-4863.

Endangered Species Act of 1973 (ESA): Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. Endangered or threatened species and critical habitat currently identified as potentially impacted by the proposed project include coho salmon (Onchorynchus kisutch), Pacific Coast western snowy plover (Charadrius alexandrinus nivosus), tidewater goby (Eucyclogobius newberrii), bald eagle (Haliaeetus leucocephalus), California brown pelican (Pelecanus occidentalis californicus) western lily (Lilium

occidentale), and the Oregon silverspot butterfly (Speyeria zerene hyppolyta). Coho presence has not been confirmed in LEWA since 1984, shortly after the CDFG coho stocking program was discontinued in 1980. If the Corps determines that a "no effect" determination is inappropriate for the coho salmon, the Corps would initiate consultation with NMFS. The Corps will initiate consultation with FWS on the above listed threatened or endangered species, except coho salmon.

Magnuson-Stevens Fisheries Conservation and Management Act: NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. Specific EFH concerns associated with this proposal include EFH for various life stages of fish species federally managed under the Pacific Ground Fishery Management Plan (e.g. various rock fish species, starry flounder, leopard shark), the Coastal Pelagics Fishery Management Plan (northern anchovy, Pacific sardine), and the Pacific Salmon Fishery Management Plan (coho and chinook salmon). Coordination with the NMFS in regard to EFH will be initiated concurrently with the ESA consultation, if necessary.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant is notified by this Public Notice that, unless they provide the Corps with evidence of a valid request for State water quality certification to the North Coast Regional Water Quality Board within 30 days of the date of this Public Notice, the Corps may consider this application withdrawn. No Corps permit will be granted until the applicant obtains the required water quality certification. The

Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403 by the close of the comment period of this Public Notice.

b. Alternatives: Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is water or wetland dependent.

Coastal Zone Management Act of 1972 (CZMA): Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project will comply with the State's Coastal Zone Management Program, if applicable. No Corps permit will be issued until the State has concurred with the applicant's certification. Coastal development issues should be directed to the California Coastal Commission (CCC), 710 "E" Street, Eureka, California 95501.

National Historic Preservation Act of 1966 (NHPA): The Corps is aware that there are archaeological resources in/around the LEWA and will consult with the State Historic Preservation Office (SHPO) and federally recognized local tribes in accordance with Section 106 of the National Historic Preservation Act. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps

completes consultation with the SHPO.

- PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, aesthetics, environmental economics, general concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.
- 5. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.
- 6. **SUBMISSION OF COMMENTS:** Interested parties may submit, in writing, any comments concerning this activity. Comments should include

the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, Eureka Field Office, P.O. Box 4863, Eureka, California 95521-4863. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Kelley Reid of our office at telephone e-mail: 707-443-0855 Kelley.Reid@spd02.usace.army.mil. Details on any changes of a minor nature which are made in the final permit action will be provided upon request.